IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11770 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITSINH D RATHOD - Petitioner
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :
MR VIKRAM J THAKOR for the Petitioner.
MS NISHA PARIKH, AGP for Respondent Nos. 1 and 2.
MR RM CHHAYA WITH MR HRIDAY BUCH for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 14/03/2007

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Ms.Nisha Parikh wavies service of notice of Rule on behalf of respondent Nos. 1 and 2. Learned counsel

Mr.R.M.Chhaya with Mr.Hriday Buch waives service of notice of Rule on behalf of respondent No.3.

The present application has been preferred for quashing and setting aside the appointment of respondent No.3 as Notary for Barvala Taluka as well as for getting direction upon Government to appoint the petitioner as a Notary for Barvala Taluka.

2. Learned counsel for the petitioner submitted that the respondent authorities have not followed the procedure as laid down under the Notaries Act,1952 and the Notaries Rules,1956 (hereinafter referred to as “the Act,1952” and “the Rules,1956”). Learned counsel for the petitioner submitted that there are criminal cases registered against respondent No.3 and so he ought not to have been appointed as a Notary. There are also objections raised for appointment of respondent No.3 as a Notary and these objections have not been considered by the respondent authorities. The petitioner is a Senior Advocate and is having Sanad from year 1995, whereas respondent No.3 is having his Sanad from year 1997. Thus, the petitioner is senior advocate in comparison to respondent No.3. There is no stigma attached to the petitioner and without considering these aspects of the matter, respondent No.3 has been appointed as a Notary by

State of Gujarat. In fact, originally three candidates had applied for Notary for Barvala Taluka. Out of three candidates, one is not qualified and, therefore, only two candidates were left out. The petitioner should be given appointment as there are no disqualifications attached to the respondent No.3.

3. Learned counsel Mr.Chhaya on behalf of respondent No.3 submitted that avernments and allegations made in the memo of the petition to the effect that a criminal offence bearing C.R.No.I-58 of 2002 of Barvala Police Station registered against respondent No.3 is factually incorrect. With the affidavit-in reply, copy of the charge-sheet is annexed, which does not reveal the name of respondent No.3. Thus, deliberately the avernments have been made by the petitioner that the respondent No.3 is involved in commissioning of the offence bearing C.R. No.I-58 of 2002. Respondent No.3 is fully qualified for the appointment of a Notary. As per Rule 3 of Notaries Rules,1956, not in a single criminal case, there is a conviction to respondent No.3. On the contrary, in criminal case bearing C.R.No.I-58 of 2002 registered at Barvala Police Station, an acquittal order has been passed by the competent Court on 12th January,2007. Mere registration of criminal complaint

does not amount to disqualification, as per Rules,1956.

4. Learned counsel for respondent No.3 submitted that after application is preferred, interviews were taken by Interviewing Committee and, thereafter, present respondent no.3 was selected. It is also pointed out that so called objections against the appointment of respondent No.3 are made by one Shri Khumansinh Kasalsinh Parmar, who himself is involved in several criminal cases. A list of criminal complaints registered against Khumansinh Kasalsinh Parmar is tendered today before this Court. He is also a client of the present petitioner and looking to the objections, which are at Annexure “D” to the memo of the petitioner, whatever factual error the petitioner has committed are referred in the objections raised by Khumansinh Kasalsinh Parmar. Learned counsel for respondent No.3 submitted that affidavit-in reply has been filed to the effect that several persons signed objections against respondent No.3, but, in fact, they have never signed the objections against respondent No.3. After following due procedure as per the Act,1952 and as per Rules,1956, respondent No.3 has been appointed as a Notary. The objections have been considered by State of Gujarat/ by the competent authority. In fact, there is no legal vested right in the petitioner to be appointed as a

Notary and there is no legal obligation to the State of Gujarat to appoint the petitioner as a Notary and, therefore, this petition may not be entertained by this Court.

5. Learned Assistant Government Pleader on behalf of respondent Nos. 1 and 2 submitted that no error whatsoever has been committed by respondent Nos.1 and 2 by giving an appointment to respondent No.3 as a Notary. Joint Secretary of Legal Department is competent authority under the Act,1952 and Rules,1956, who has recommended the name of respondent No.3 to the Government as a Notary, after holding the interviews and after considering the objections raised against respondent No.3 and after careful consideration of all the relevant materials pertaining to the petitioner as well as to respondent No.3.

6. Learned Assistant Government Pleader further submitted that the procedure prescribed under the Act,1952 and the Rules,1956 have been followed scrupulously. In fact, there is no vested right in the petitioner to get his appointment as a Notary and correspondingly, there is not legal duty cast vested in respondent Nos. 1 and 2 to appoint the petitioner as a

Notary. So far as appointment of respondent No.3 is concerned, he is fully qualified as per the Rules,1956. There is no disqualification attached to respondent No.3. Learned Assistant Government Pleader also pointed out Section 10 of the Notaries Act,1952, Rule 3 of the Notaries Rules,1956 as well as the procedure for the appointment of a Notary. It is also submitted that after considering all the objections and relevant materials, respondent No.3 has been appointed as a Notary by Interviewing Committee consisting of two Joint Secretaries and a Deputy Secretary. Details of marks have also been shown from the original files, which reveals that respondent No.3 has secured highest marks than the petitioner and lastly, it is submitted that there is no need to pass speaking order for appointment of respondent No.3 as a Notary. It is further submitted that from 17th May,2006, respondent No.3 has been appointed as a Notary for the period of five years and, therefore, this petition may not be entertained by this Court by exercising extra ordinary jurisdiction conferred under Article 226 of the Constitution of India.

7. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this petition, mainly

for the following facts and reasons :

(i) As per Rule 3 of the Rules,1956, respondent No.3 is qualified for getting appointment as a Notary. Rule 3 of Rules,1956, reads as under:

> ***"3. Qualifications for appointment as a notary.***- *No person shall be eligible for appointment as a notary unless on the date of the application for such appointment-*
>
> *(a) a person had been practising at least for ten years, or*
> *(aa) a person belonging to Scheduled Castes/ Scheduled Tribes and other backward classes had been practising at least for seven years, or*
> *(ab) a woman who had been practising at least for seven years,*
> *as a legal practitioner, or*
> *(b) he had been a member of the Indian Legal Service under the Central Government, or*
> *(c) he had been at least for ten years,-*
> *(i) a member of Judicial Service; or*
> *(ii) held an office under the Central Government or a State Government requiring special knowledge of law after enrollment as an advocate; or*
> *(iii) held an office in the department of Judge Advocate General or in the legal department of the armed forces."*

(ii) Looking to the avernments of learned counsel for the petitioner as well as respondent No.3, both were qualified for appointment as a Notary, under Rule 3(aa) as "other backward classes candidates". Rules 6 & 7 of the Notary, read as under :

*"**6. Preliminary action on application.** - (1) The competent authority shall examine every application received by him and, if he is satisfied that the applicant does not possess the qualifications specified in rule 3, or that any previous application of the applicant for appointment as a notary was rejected within six months before the date of the application, shall reject it and inform the applicant accordingly.*

(2) If the competent authority does not reject the application under sub-rule (1),-
(b) he may, if he thinks fit, ascertain from any Bar Council, Bar Association, Incorporated Law Society or other authority in the area where the applicant proposes to practise, the objections, if any, to the appointment of the applicant as notary, to be submitted within the time fixed for the purpose.

***7. Recommendation of the competent authority. -** (1) The competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under sub-rule (2) of rule 6, make a report to the appropriate Government recommending either that the application may be allowed for the whole or any part of the area to which the application relates or that it may be rejected.*

(2) The competent authority shall also make his recommendation in the report under sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including the cost of hearing, if any,, shall be borne.

(3) In making his recommendation under sub-rule (1), the competent authority shall have due regard to the following matters, namely:-
(a) whether the applicant originally

resides in the area in which he proposes to practise as a notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practise and the number of existing notaries practising in the area, it is necessary to appoint any additional notaries for the area;

(c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a notary, and in the case of a legal practitioner also to the extent of his practice, the applicant is fit to be appointed as a notary;

(d) where the applicant belongs to a firm of legal practitioners, whether, having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm; and

(e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants."

(Emphasis supplied)

(iii) In view of the aforesaid Rules, after receiving the application preferred under Rule 4 of the Rules,1956, the procedure as referred to in Rules 6 and 7 are required to be followed. It is open for the competent authority to invite objections, as per Rule 6(b) of the Rules,1956. Looking to the facts of the present case, no such objections have been invited. If the objections are invited, Rule 7(1) is required to be followed, otherwise, while making his recommendations Rule 7(3) is required to be followed. Looking to Rule 7(3), five criteria have

been mentioned for consideration by the competent authority.

(iv) Learned counsel for the petitioner submitted that so far as Rule 7(3)(c) is concerned, nature of the objections ought to be considered and if the two applicants are there, who is found more suitable by the competent authority can be appointed as a Notary. Looking to the facts of the present case, original file and looking to the affidavit-in-reply filed by Deputy Secretary, Legal Department, State of Gujarat, especially para-10 thereof, the objections received against the appointment of respondent No.3 have been considered by the competent authority before making recommendation. So far as Rule 7(3)(e) is concerned, it is applicable only where applications from other applicants in respect of the same area are pending, but in the facts of the present case, petitioner as well as respondent No.3 applied simultaneously for appointment of a Notary. Nobody's application is pending earlier in point of time. Even otherwise also, Rule 7(3)(e) for which candidate more subjective satisfaction has to be arrived at by the competent authority. Once the procedure is followed by the competent authority, the Court cannot replace its subjective satisfaction. Whether there is any procedural

impropriety or not, is required to be checked. Facts of the present case reveal that the objections were considered for choosing more suitable candidate. More transparent method is adopted by constituting Committee of Two Joint Secretaries and a Deputy Secretary to hold interview of the petitioner as well as of respondent No.3. The petitioner as well as respondent No.3 appeared before this Committee and looking to the marks given by this Interviewing Committee of high ranking officers of the Department, it is clear that respondent No.3 has secured more marks than the petitioner. The basic purpose to hold the interview is to judge a suitable candidate. Thus, Rule 7(3)(C) and (e) are also complied with and there is no procedural impropriety in the appointment of respondent No.3 as a Notary.

(v) There is no illegality, irrationality or procedural impropriety in the appointment of respondent No.3 as a Notary. The provisions of the Act,1952 and Rules,1956 have been followed by the competent authority.

(vi) There is no legal right vested in the petitioner to be appointed as a Notary and there is no legal duty imposed upon respondent Nos. 1 and 2 to appoint petitioner as a Notary. In fact, looking to the memo of

the petition as well as Rejoinder filed by the petitioner, it appears that there is a frivolous allegation so far as the offence bearing C.R. No.I-58 of 2002 is concerned. Respondent No.3 is not at all involved in this criminal case. Even after reading affidavit-in reply filed by respondent No.3, the petitioner has mentioned the fact that respondent No.3 is involved in criminal offence bearing C.R. No.I-58 of 2002, though his name is not revealed in the charge-sheet filed by the police, after investigation is over. The petitioner believed that respondent No.3 is a member of Bhartiya Janta Party, he is involved in the offence bearing C.R.No.I 58 of 2002, this allegation is based upon thoroughly, unwarranted logic. This allegation in rejoinder filed by the petitioner, especially in para-4, reads as under:

> *"4. ......*
> *(i) Contents of para-2(a) are not true and therefore not admitted. It is not true that the respondent No.3 is not an accused in criminal case registered at I-C.R.No.58/02. It is pertinent to note that in the F.I.R. being I-C.R.No.58/02 there is reference of crowd of persons connected with BJP. It is also pertinent to note that the present respondent no.3 is the person connected with BJP and therefore, it cannot be said that the respondent no.3 is not an accused in the said criminal case. I did make application under the right of Information Act,2005 to the office of Mamlatdar of Barvala for obtaining the*

information regarding the relationship of respondent no.3. with the BJP. I have been supplied the information by the learned Mamlatdar of Barvala vide communication dated 1.8.06. I crave leave to produce the copies of the said communication along with the list of counting agents of election at Annexure-I (Collectively) wherein the respondent No.3 is shown the agent of BJP. Therefore, in view of this fact there is no suppression on the part of the petitioner. It is not true and therefore, not admitted that no overt act has been attributed to the respondent No.3 in criminal case being I C.R.No.16/03. It is submitted that I have been able to obtain the copy of one more case being I-C.R.No.31/94 filed against the respondent No.3. I crave leave to produce a copy of the said FIR as Annexure-'J'. In the said FIR the respondent No.3 is shown as accused No.6. With a view to avoid any allegations from the respondent no.3 it is brought to the notice of the Hon'ble Court that so far as criminal case being I-C.R.No.31/94 is concerned, the respondent No.3 is said to have been acquitted by learned Special Judge of Ahmedabad Rural. However, fact remains that one more criminal case was filed against the respondent No.3 and therefore, it indicates that the respondent No.3 is having criminal history.....”

Looking to the provisions of the Act, especially Section 10 of the Act,1952, if there is any conviction by any competent court for the offence then, the person can be removed as a Notary. In the facts of the present case, not in a single case the respondent no.3 is convicted. Bare allegation cannot be equated with the conviction. Hundred possibilities cannot be equated with one truth. In Affidavit in Sur-rejoinder filed by respondent No.3,

it has been pointed out that persons, who have allegedly signed the objections against respondent No.3 have stated on oath that they have never signed these objections against respondent No.3. One Khumansinh Kasalsinh Parmar, who has singed objections (Annexure “D” to the memo of the petition), as per learned counsel for respondent No.3, was a client of the present petitioner. Thus, so-called objector, was a client of the petitioner. The petitioner himself is involved in following offences- antecedents :

Sr. No.	**Police Station**	**C.R. No.**
1.	Barvala Police Station	I-25/2000
2.	Private complaint in Dhandhuka Court	15/2001
3.	Private complaint in Dhandhuka Court	19/2001
4.	Private complaint against K.R.Jadeja in Dhandhuka Court	7/06
5.	Private complaint against Dy.S.P. Of Botad in Botad Police Station	II-3/2001
6.	Botad Police Station	9/2001
7.	Botad Police Station	11/2001

Apart from this aspect of the matter, it will be suffice to say that the competent authority has considered the objections and after holding interviews by Interviewing Committee and after considering the facts

and circumstances of the case, has recommended the name of respondent No.3 for appointment of a Notary. The subjective satisfaction arrived at by the competent authority cannot be replaced by this Court, unless there is illegality or procedural defects in the selection. As stated hereinabove, there is no illegality committed by the respondent authority, as per the Act and the Rules. There is no procedural impropriety and, therefore, subjective satisfaction arrived at by respondent Nos. 1 and 2 for appointment of respondent No.3 as a Notary cannot be taken into judicial review by this Court.

(vii) Learned counsel for the petitioner submitted that the petitioner is Senior advocate than respondent No.3, therefore, the petitioner should be appointed as a Notary. This contention is not accepted by this Court because there is no such provision under the Act to give priority to the Senior member of the Bar and, therefore, this is cannot be a ground for appointment as a Notary.

(viii) The petitioner has also referred in his Affidavit-in Rejoinder for the offence bearing C.R.No.I-31 of 1994 against respondent No.3. But respondent No.3 has been acquitted for the aforesaid offence. Thus, contentions raised by the petitioner against respondent

No.3 for appointment as a Notary are baseless and looking to the allegations, they tantamount to frivolous allegations.

8. As a cumulative effect of the aforesaid facts, reasons and looking to the original file of appointment of Notary of respondent No.3 and affidavit-in reply filed by the State, there is no illegality committed by respondent Nos. 1 and 2, while appointing respondent No.3 as a Notary. I see no reason to interfere with the appointment order of respondent No.3 as a Notary, by exercising extra ordinary jurisdiction conferred under Article 226 of the Constitution of India. In view of the aforesaid facts, there is no substance in this petition and, therefore, the same is hereby dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

(D.N.PATEL,J)

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